

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

FormFactor, Inc.
2130 Research Drive
Livermore, California 94550
(ALAMEDA COUNTY)

ID No. CAR 000 005 934

Respondent.

Docket HWCA 20040476

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and the FormFactor, Inc. (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates hazardous waste and treats non-hazardous waste at the following site: 2130 Research Drive (mailing address 2140 Research Drive), Livermore, California 94550 (Facility) in Alameda County.

2. The Department inspected the Site on August 18, 2003.

3. The Department alleges the following violations:

3.1. The Respondent violated California Code of Regulations (Cal. Code Regs.), title 22, section 66262.11, subdivision (b) and (c) in that on or about August 18, 2003, Respondent failed to make a hazardous waste determination, failed to determine if the spent filters from the wastewater treatment were subject to land disposal restrictions (LDR), and failed to determine if the Resource Recovery Conservation Act (RCRA) listed waste met treatment standards as a non-RCRA waste prior to shipping.

3.2. The Respondent violated Cal. Code Regs., title 22, § 66262.34, subd. (a)(1)(A), which incorporates by reference section 66265.174, in that on or before

August 18, 2003, Respondent failed to conduct any weekly inspections of five (5) generator areas.

3.3. The Respondent violated Cal. Code Regs., title 22, § 66262.34, subd. (a)(4), which incorporates by reference section 66265.16, subdivision (d)(1), in that on or about August 18, 2003, Respondent failed to have a written training plan specific to the job for employees handling hazardous waste.

3.4. The Respondent violated Cal. Code Regs., title 22, § 66262.34, subd. (a)(4), which incorporates by reference section 66265.33, in that on or about August 18, 2003, Respondent failed to test and maintain emergency response equipment (two fire extinguishers in the wire bond areas) in June and July of 2003 when required monthly in their emergency response plan.

4. The Respondent represents that it has corrected the violations as of September 2, 2003. The Department relies on this representation in issuing this Consent Order.

5. The parties wish to avoid the expense of litigation and to ensure continued compliance.

6. Jurisdiction exists pursuant to Health and Safety Code (Health & Saf. Code) section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9.1. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department

regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

9.3. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.4. Endangerment During Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further work for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

9.5. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.6. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including

but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.7. Sampling, Data and Document Availability: Respondent shall retain this Consent Order and any subsequent, related correspondence at the facility for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.8. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

PAYMENTS

10. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$7,750 of which \$6,348.12 is a penalty and \$1401.88 is reimbursement of the Department's costs. Respondent's check shall

be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

Photocopies of the check shall be sent to:

Mr. Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Ms. Vivian Murai
Office of Legal Counsel and Criminal Investigations
Department of Toxic Substances Control
1001 I Street, 23rd Floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health & Saf. Code, § 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may also subject Respondent to costs, penalties, and/or punitive

damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health & Saf. Code, § 25188 and other applicable provisions of law.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent order

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

11.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: August 19, 2004

Original signed by

Signature of FormFactor, Inc. Representative

Typed or Printed Name
Title of Representative

Stuart L. Merkadeau

Sr. Vice President, General Counsel & Secretary

Dated: August 24, 2004

Original signed by

Mr. Charles A. McLaughlin, Chief
Statewide Oversight and Enforcement Branch
Department of Toxic Substances Control

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